Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-794

LOCAL UNION NO. 639, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INC.,

v. *Petitioner,*

DANIEL GEORGE and PHILLIP A. FEASTER

and

WILLIAM J. USERY,
Secretary of Labor,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS DANIEL GEORGE AND PHILLIP A. FEASTER IN OPPOSITION

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS DANIEL GEORGE AND PHILLIP A. FEASTER IN OPPOSITION

Respondents Daniel George and Phillip A. Feaster (hereinafter collectively "Respondents") submit this Brief in opposition to the Petition of Local Union No. 639 for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in the proceeding below on August 27, 1976.

The Petition should be denied because, as Respondents will show below, that judgment and opinion conflict with no decision of this Court and, indeed, fully accord with this Court's decisions in *Trbovich v. United Mine Workers of America,* 404 U.S. 528 (1972) and *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975) among others. The decision below conflicts with no decision of any other United States Court of Appeals and, in any event, involves a question of limited factual and legal import.

QUESTION PRESENTED

Whether this Court should grant *certiorari* to review a Court of Appeals decision holding that the absence of a specific attorneys fee award provision in a statute authorizing suits by the Secretary of Labor does not, as a matter of law, bar a fee award to a plaintiff-intervenor whose litigation-related actions create, or contribute to, a common benefit to the Union membership, where

a. that narrow holding conflicts with no other Court of Appeals decision, and

b. follows decisions of this Court authorizing private party intervention in suits under the statute in issue (*Trbovich v. United Mine Workers of America,* 404 U.S. 528 (1972)); authorizing awards of attorneys fees under the same statute in similar circumstances (*Hall v. Cole,* 412 U.S. 1 (1973)), and recognizing an exception to the general "American rule" against attorneys fees awards in instances where the actions of the person seeking an award produce a common benefit for a defendant class (*Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975)).

COUNTERSTATEMENT OF THE CASE

Respondents, George and Feaster, were, at all pertinent times, truck driver members of Petitioner, Local Union No. 639 ("Local 639"). Concerned about the rights of Local 639 members to have a democratically conducted election in accordance with Union bylaws, the international union's constitution and Federal law, Respondents and others sought and obtained the assistance of counsel (hereafter "Long"). Long advised the members of their rights under the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. § 411, *et seq.,* hereafter "LMRDA") and assisted them in using internal union procedures to vindicate their right to run for union office.[1]

After Respondents lost their bid for union office in the Local 639 election on January 23, 1972, Long assisted them in prosecuting their claims of election irregularities through internal union remedies. When Respondents had exhausted their internal remedies without obtaining satisfaction, they sought and obtained Long's assistance to prepare and submit to the Secretary of Labor (the "Secretary") a detailed complaint respecting the conduct of the Local 639 election, seeking the aid of the Secretary to sue to set aside the election in accordance with § 402 of LMRDA, 29 U.S.C. § 482. That complaint was filed May 12, 1972. Long then, and thereafter, prepared and submitted to the Department of Labor a substantial volume of documentation and files obtained and prepared by Respondents and himself, setting forth the factual basis for their complaint to the Secretary.

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[1] Except as otherwise indicated, the factual data summarized herein are taken from the Affidavit of Counsel as to Services Rendered filed in the District Court on March 14, 1974, and set out in full in the appendix hereto.

Because the Secretary was thereafter dilatory in initiating litigation in accordance with § 402(b) of LMRDA, Long repeatedly solicited the Secretary orally and in writing over a period of some four months to initiate the action authorized by the statute.

The Secretary finally filed suit September 29, 1972. Because that suit had been filed dangerously close to the end of the period within which the statute required the Secretary to bring an action, and Respondents feared that failure diligently to seek service of process on Local 639 could result in the claim that the suit was untimely, Long assisted the U.S. Marshal's office in perfecting service. He thereafter successfully solicited and assisted the Secretary to seek and obtain an injunction against Local 639's discrimination against, and harassment of, Respondent George and others (Appendix 12a, 13a).

When, over a year and a half after the January 1972 election, Long was unsuccessful in his attempts to convince the Secretary to move for summary judgment, Long prepared and submitted a motion for summary judgment and supporting factual and legal papers. Only then did the Secretary follow suit. The District Court granted summary judgment and set aside the January 1972 election. That determination was sustained on appeal; *Brennan v. Local Union 639,* 161 U.S. App. D.C. 173, 494 F.2d 1092 (1974).

A new election was later held pursuant to District Court Order in which Respondents unsuccessfully sought office. They again sought the aid of the District Court to set aside the election. On June 24, 1974, the District Court entered an order certifying the results of the rerun Local

639 election. It simultaneously denied without opinion Respondents' motion for an award of attorneys fees (Appendix 1a).

Respondents appealed to the United States Court of Appeals for the District of Columbia Circuit both the denial of their motion for fees and the order certifying the rerun election. The Secretary opposed the effort to set aside the rerun election, but took no position on the attorneys fees issue.

On August 27, 1976, the Court of Appeals affirmed the District Court's certification of the rerun election but reversed and remanded on the attorneys fees issue; the issue on which Local 639 here seeks a Writ of Certiorari. The Court of Appeals necessarily was unclear whether the District Court denied the motion because Title IV of LMRDA barred an award of attorneys fees or because the District Court had made a factual determination that Respondents had not been instrumental in creating a benefit to the Union membership.

The Court of Appeals concluded that the District Court had the power to award attorneys fees on a "common benefit" rationale, to intervenor plaintiffs like Respondents in a suit brought by the Secretary under § 402 of LMRDA. It remanded the case to the District Court for a determination whether the facts here warranted an award to Respondents and if so, in what amount, applying standard principles for determining the reasonable value of the legal services rendered.

ARGUMENT

REASONS FOR DENYING THE WRIT

The Court of Appeals simply held that a Federal Court has the power to award attorneys fees from a union to an intervenor Plaintiff in a suit brought by the Secretary of Labor under § 402 of LMRDA if the intervening Plaintiff creates or assists in creation of a "common benefit" for the union membership. The Court of Appeals did not hold as a matter of law that attorneys fees must be awarded in all cases to intervening Plaintiffs in § 402 cases. The Court of Appeals did not award attorneys fees to Respondents. It simply remanded the case to the District Court for determination whether Respondents had in fact participated in the creation of a common benefit and, if so, what fees should be awarded.

That holding applies to a single segment of LMRDA; and to very limited fact situations within the scope of that segment; *i.e.*, those cases in which an intervening plaintiff can establish that he has in fact made a contribution to the "common benefit." The scope of the decision is thus quite limited in terms of its potential applicability to any significant number or class of persons. The decision, moreover, is entirely in accord with recent decisions of this Court and conflicts with no decision of any other Court of Appeals.

I. The Court of Appeals Decision Is In Accord With Pertinent Decisions of This Court.

Local 639's petition for certiorari erroneously advises this Court that the decision of the Court below conflicts

with *Trbovich v. United Mine Workers* and *Alyeska Pipe-Line Service Co. v. Wilderness Society, supra.* The fact is that the Court of Appeals decision is entirely in harmony with those decisions of this Court, as it is with *Hall v. Cole,* 412 U.S. 1 (1973).

Alyeska involved litigation by the Wilderness Society and others against the Secretary of the Interior to prevent the issuance of permits for the construction of the Trans-Alaska oil pipeline. Alyeska Pipeline Service Co. was granted leave to intervene. Upon plaintiffs' successful termination of the litigation, they sought and were ultimately granted an award of attorneys fees from Alyeska by the Court of Appeals. Alyeska, the intervening defendant, had been injured, rather than benefitted, by the decision.

This Court reversed. In doing so, however, it recognized and reaffirmed the exceptions to the general "American" rule against an award of attorneys fees to the successful plaintiff. Among the expressly recognized exceptions to that rule was the "common benefit" exception. This Court recognized that exception as one of those exceptions that "are unquestionably assertions of inherent powers in the courts to allow attorneys fees in particular situations, unless forbidden by Congress . . .," 421 U.S. 240, at 259.

One of the cases this Court relied upon in support of its proposition that the "common benefit" rule had been consistently followed was *Hall v. Cole, supra.*

This Court's decision in *Hall* essentially set the pattern for the decision of the Court of Appeals below. That case arose under Title I of LMRDA. Unlike Title IV,

Title I permits suits by individual union member plaintiffs but, like Title IV, makes no provision for an award of attorneys fees. The plaintiff in that case was an expelled union member who sued the union under § 102 of LMRDA for violating his right of free speech under § 101 (a)(2). The District Court ordered him reinstated and granted him counsel fees. The Court of Appeals affirmed as did this Court. This Court pointed out there that:

> "by vindicating his own right the successful litigant dispels the 'chill' cast upon the rights of others. Indeed, to the extent that such lawsuits contribute to the preservation of union democracy, they frequently prove beneficial 'not only in the immediate impact of the results achieved but in their implications for the future conduct of the union's affairs.' . . . Thus . . . reimbursement of respondent's attorneys fees out of the union treasury simply shifts the costs of litigation to 'the class that has benefitted from them and that would have had to pay them had it brought the suit.'" 412 U.S. 1, at 8, 9.

Hall, expressly considered, and disposed of, the question whether the statute's failure expressly to authorize an award of attorneys fees precluded such an award. The Court held there that the absence of specific statutory authorization did not bar an award. The *Hall* opinion expressly distinguished *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967) on which Petitioners seek to rely here.

The award issue in *Fleischmann* arose under the Lanham Act, which "meticulously detailed the remedies available to a plaintiff . . . ." Hence, this Court decided, Congress must have intended the express remedial provisions of the statute "to mark the boundaries of the power to award monetary

relief in cases arising under the Act;" 386 U.S. 714, at 719, 721.

Like the Court of Appeals in this case, however, this Court in *Hall* distinguished LMRDA from the Lanham Act. It found no such "meticulously detailed" remedies set out there and found no difficulty in disposing of the union's argument in that case that specific provisions in other portions of LMRDA for an award of counsel fees precluded "fee shifting" in suits under Title I. The Court cited *Mills v. Electric Auto-lite Co.*, 396 U.S. 375 (1970), at 390-391 for the proposition that inclusion in certain sections of a statute of express provisions for attorneys' fee recovery "should not be read as denying to the courts the power to award counsel fees in suits under other sections of the Act when circumstances make such an award appropriate. . . ."

Thus the decision of the Court of Appeals below fell within, and relied upon, the "common benefit" exception to the normal American rule that this Court reaffirmed in *Alyeska.* It simply followed the same reasoning laid down by this court in *Hall v. Cole,* as well as *Mills,* to reach the conclusion that specific provision in other parts of the statute for an award of attorneys fees did not preclude "fee shifting" in actions brought under other sections lacking specific attorney fee provisions.

Unlike Title I of LMRDA, under which *Hall* arose, Title IV authorizes initiation of actions exclusively by the Secretary of Labor. However, this Court ruled in *Trbovich v. United Mine Workers* that despite the statutory limitations on *initiation* of Title IV actions, complaining union members may intervene in Title IV proceedings. This Court found, in *Trbovich*, a basis for intervention in the distinction between the Secretary of Labor's functions in (1) act-

ing as lawyer for the union member and (2) vindicating the "vital public interest in insuring free and democratic union elections." This Court pointed out that:

> "Both functions are important and they may not always dictate precisely the same approach to the conduct of the litigation. Even if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about the performance of 'his lawyer'." 404 U.S. 528, at 538.

Thus, this Court held in *Trbovich* that "in a post-election enforcement suit, Title IV imposes no bar to intervention by a union member;" and that intervention may extend not only to the claims of illegality presented by the Secretary's complaint, but also the proposed terms of a new election and to assiting the Court in fashioning suitable remedial orders, 404 U.S. 528, at 537.

The decision of the Court of Appeals here is in fact no more than the product of *Trbovich*, *Hall*, and the "common benefit" rule so recently recognized in *Alyeska*. The propriety of Title IV case intervention by disgruntled union members in support of the Secretary was established by *Trbovich*. The propriety of an award of attorneys fees in cases where a "common benefit" has been obtained through the efforts of the person seeking such fees is established by the "common benefit" line of cases; and *Hall v. Cole* extends that rule specifically to LMRDA cases brought under Titles of that statute that do not specifically provide for an award of attorneys fees.

The Court of Appeals made no award of attorneys fees in this case. It dictated no requirement to the District Court that such fees be awarded. It simply held that

there is no bar, as a matter of law, to an award of attorneys fees to an intervening plaintiff in a case arising under Title IV of LMRDA so long as that intervenor has in fact contributed to the "common benefit." *Hall v. Cole*, of course, leaves no doubt that the intervening union member, by contributing to the vindication of his own rights to democratic union procedures, vindicates the right of all union members and creates a "common benefit."

The decision of the Court of Appeals thus conflicts with none of the cases upon which Petitioners rely.

II. The Court of Appeals Decision Here Neither Creates Nor Suggests Any Conflict with the Decision of Any Other Court of Appeals.

Petitioners effectively concede that there is no conflict between circuits in this case. They do suggest that a District Court decision in the Western District of Pennsylvania, now pending on appeal, *Brennan v. United Steel Workers (District 31)* (C.A. No. 73-957) (1975) is at odds with the decision of the Court of Appeals here. That does not rise, however, to the stature of a conflict between circuits.

In any event the decision in issue here has extremely limited practical significance. It relates solely to cases arising under Title IV of LMRDA. It has practical effect only when the intervening union member in the Title IV case has contributed to the "common benefit" and not merely tagged along as a rider on the Secretary's coattails. It may not be without significance here that neither in the District Court nor in the Court of Appeals did the Secretary of Labor take any position with respect to an award of attorneys fees.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PETER J. BRENNAN, *et al.*,
Plaintiff,

DANIEL GEORGE and PHILLIP A. FEASTER,
Intervenor-Plaintiffs,

v.

LOCAL UNION NO. 639, etc.,
Defendant.

FILED
JUNE 24, 1974
JAMES F. DAVEY, Clerk

Civil Action No. 1963-72

ORDER

Upon consideration of intervenor-plaintiffs' motion for an award of legal fees, costs, and suit money and upon consideration of defendant's opposition to motion for award of fees, costs, and suit money, it is this 24th day of June, 1974, hereby

ORDERED, that intervenor-plaintiffs' motion be, and hereby is, denied.

/s/ George L. Hart, Jr.
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

PETER J. BRENNAN, *et al.*,)
Plaintiffs,)
v.) **Civil Action No. 1963-72**
)
LOCAL UNION NO. 639, etc.,)
Defendant.)

MOTION OF INTERVENOR-PLAINTIFFS FOR AN ORDER AWARDING THEM LEGAL FEES, COSTS, AND SUIT MONEY

Intervenor-plaintiffs Daniel George and Phillip Feaster respectfully move this Court for entry of an order awarding attorney's fees, costs, and expenses of $45,000 incurred on behalf of the members of defendant Local Union No. 639, arising out of the election of union officers held January 23, 1972, and related matters, including the protests of election irregularities, exhaustion of internal remedies, filing of complaint with the Department of Labor, the litigation in the instant proceeding through the appeal, No. 73-1938, decided March 8, 1974, and collateral matters such as the preliminary injunction against issuing a withdrawal card for Daniel George and related matters. The grounds for this motion are set forth in a supporting memorandum of points and authorities and an affidavit.

/s/ John V. Long

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

PETER J. BRENNAN, *et al.*,)
Plaintiffs,)
v.) **Civil Action No. 1963-72**
)
LOCAL UNION NO. 639, etc.,)
Defendant.)

AFFIDAVIT OF COUNSEL AS TO SERVICES RENDERED

COUNTY OF MONTGOMERY)
) ss:
STATE OF MARYLAND)

John V. Long, having first been duly sworn upon his oath in due form of law, deposes and says as follows:

1. **Background and Experience of Counsel**

I was graduated from the University of Chicago with a BA degree in social sciences and from the law school of that university with a JD degree in 1951. On April 27, 1951, I was admitted to practice in this Court and I have been a good-standing member of the District of Columbia Bar continuously since that date. For approximately four years, I served as a legal assistant to the Chairman of the National Labor Relations Board. I have taught as an adjunct professor of law (social legislation) at the Ohio State School of Law and Catholic University Law School. I have had extensive experience in labor litigation including, among

others, representation of the Bakery & Confectionery Workers International Union, the Washington-Baltimore Newspaper Guild, and Building Laborers' Local Union 74. I have also represented employers in labor litigation. I am regarded as an experienced specialist in the field of labor law in the District of Columbia, where I have engaged in private practice since 1956 and in Maryland, where I also practice actively.

2. Counsel Entered into a Fee Arrangement for His Services

In the Spring of 1971, several members of defendant Local Union 639, including intervenor-plaintiffs Daniel George and Phillip Feaster *inter alia*, consulted me concerning what might be done to protect the rights of members of defendant Local 639 to have a democratically conducted election in accordance with internal union bylaws, the International constitution, and in accordance with federal law. This group of members had formed an informal group known as the Committee to Reform Local 639. Intervenor-plaintiff Daniel George informed me that the group had consulted previously with several lawyers specializing in labor law who were unable to represent their interests or to advise individual members of defendant Local Union 639, either because of actual or potential conflicts of interest or because counsel had expressed apprehension that union or management clients they were representing then might disapprove of their undertaking counselling of union members as to internal union matters unless counsel were retained by incumbent officers. The members of defendant Local Union 639 who consulted me on that occasion were full-time drivers with family responsibilities and modest financial resources. They informed me that the then counsel for defendant Local Union 639 (an attorney who has not entered

an appearance in this case) was, in their opinion, acting in effect as counsel for the incumbent officers with respect to the election scheduled for December 1971, and that he was not available to advise individual members as to their rights, including the rights of members to run for union office and to support candidates of their choice, and their rights generally to participate in internal union activities.

I informed the intervenor-plaintiffs and other members of defendant Local Union 639 who consulted me that my hourly rate then was $50 plus out-of-pocket disbursements. It was agreed that I would be compensated eventually for services rendered and that out-of-pocket disbursements would be reimbursed currently.

3. Pre-Election Services Rendered

A. General Services Concerning Members' Rights Under Titles I, II, and IV.

Thereafter, in a series of meetings with intervenor-plaintiffs and other members of Local 639, I advised members of Local 639 concerning their rights under Title I of the Landrum-Griffin Act (29 U.S.C. § 411), known as the "Bill of Rights of Members of Labor Organizations." I advised them concerning Title II of the Landrum-Griffin Act (29 U.S.C. § 431), which requires financial reports by labor organizations and Title V, which sets fiduciary standards; and I assisted them in obtaining copies of such reports filed by defendant Local Union 639. I advised them concerning election procedures established by federal law under Title IV of the Landrum-Griffin Act (29 U.S.C. § 481). I explained to them the differences between the provisions of the Landrum-Griffin Act and the provisions of various

other labor laws. These services accounted for approximately 56 hours of legal services between April 1 and November 1, 1971.

For the period between approximately May 1, 1971, and January 23, 1972, during which the affiant advised members of Local Union 639 concerning their rights under the Landrum-Griffin Act to express themselves and run for office and support candidates of their choice, and concerning the application of law to the election procedure, I devoted approximately 227 hours, exclusive of the representation of intervenor-plaintiff Daniel George in the Labor Board proceeding previously described.

B. Services Rendered in NLRB Proceedings Over Discharge of Daniel George

In September 1971, intervenor-plaintiff Daniel George was discharged from his job as a truckdriver. The affiant assisted him in filing unfair labor practice charges in Case No. 5-CA-5308. The discharge was subsequently held by the National Labor Relations Board to have violated Sec. 8(a)(3) of the Labor-Management Relations Act of 1947 in a decision issued January 11, 1973, in re Jacobs Transfer, Inc., Respondent, and Daniel George, Charging Party, 201 NLRB No. 34. This case involved nine days of hearing before an Administrative Law Judge which began February 28, 1972, and terminated on March 13, 1972 (1200 pages of hearing transcript), and I filed a brief. Subsequent proceedings in that matter included hearings before the Joint Area Teamsters Committee and an Eastern Conference Joint Committee with respect to intervenor-plaintiff George's reinstatement rights. I made a presentation to the Advice Section of the Office of the General Counsel of the National Labor Relations Board. The present status

of the matter is that the Regional Director of the Fifth Region of the National Labor Relations Board advised Respondent Jacobs Transfer on March 4, 1974, as follows:

> "Pursuant to the Order of the Board in Jacobs Transfer, Inc., 201 NLRB No. 34, the discriminatee, Daniel George, is entitled to full reinstatement to his former job, without prejudice to his former rights or privileges, or to a substantially equivalent position. In addition, the Order requires that Mr. George be made whole for any loss of earnings suffered as a result of the discrimination against him."

This matter was related to the election proceedings and the free speech rights of members in that defendant Local Union 639 repeatedly sought to issue a withdrawal card to Daniel George on the ground that he has not been employed within the union's jurisdiction since his discharge. I devoted approximately 500 hours to the aforesaid National Labor Relations Board case.

4. Exhaustion of Internal Remedies

At the nomination meeting defendant Local Union 639 held November 7, 1971, seven of the candidates duly nominated for office, including intervenor-plaintiffs Daniel George and Phillip Feaster, were notified by telegram signed by President DeBrouse of Local Union 639, that they were not eligible for union office because they had not met the requirements of the said attendance rule. On the basis of the bylaws of defendant Local Union 639 and of the constitution of the International Brotherhood of Teamsters, I concluded that an attendance requirement in defendant Local Union 639's bylaws for eligibility to run for office

in the local union violated the International constitution, and that the latter's less restrictive rule was also illegal as an unreasonable requirement under Title IV of the Landrum-Griffin Act. I prepared an immediate appeal of this issue to the International Union. That appeal was partially successful in that it resulted in instructions from the International Union invalidating the nomination meeting, scheduling a new nomination meeting, and postponing the original date of the election. Thus, the original election date of December 12, 1971, was cancelled and a new nomination meeting date was set. At the new nomination meeting held December 19, 1971, seven candidates running on the same reform slate with intervenor-plaintiffs were disqualified again. I filed appeals to the International Brotherhood of Teamsters. Some, but not all, of these appeals resulted in rulings that some of those who had been disqualified were eligible. Following the election held on January 23, 1972, I met with 13 Local Union 639 members who were either unsuccessful candidates for office or candidates disqualified under the attendance rule. With the help of their election observers, I gathered facts upon which I based their timely election protest dated January 25, 1972, consisting of eleven pages alleging thirteen specific irregularities in the conduct of the election, including *inter alia* failure to send out more than 2500 notices to the more-than-6000 members, and improper disqualification of nominees by application of an illegal attendance rule.

Thereafter, the 13 candidate-members, who had signed the election protest that I had prepared, undertook, with my advice, further steps to exhaust their internal remedies. Following a hearing conducted by Joint Council No. 55 of the International Brotherhood of Teamsters, the Joint Council by majority vote directed that "the election held

by Local Union 639 on January 23, 1972, be set aside, due to failure of the local union to comply with its by-laws . . . and the Labor-Management Reporting and Disclosure Act of 1959, Title IV . . ., all pertaining to proper notice to members concerning nominations and elections. . . ." Had defendant Local Union 639 complied voluntarily with the ruling of its Joint Council, the instant proceeding would have been rendered unnecessary and the expense and time of lawyers would have been eliminated. However, defendant Local Union 639 appealed the decision of the Joint Council to the International Brotherhood of Teamsters. Having exhausted their internal remedies without obtaining satisfaction, in accordance with the requirements of the LMRDA, intervenor-plaintiffs George and Feaster filed their complaint concerning the conduct of the election with the Secretary of Labor on May 12, 1972. I prepared and submitted to the Department of Labor documentation and files setting forth the factual basis for the complaint and establishing that internal remedies had been exhausted.

5. Waivers Over Objections of Intervenor-Plaintiffs

Intervenor-plaintiffs became dissatisfied immediately with the manner in which the Secretary of Labor was handling their complaint since, over the objections of the intervenor-plaintiffs, the Secretary's representative accepted a waiver of the 60-day statutory period of time, from Local Union 639 and its parent body, within which the Secretary of Labor might initiate litigation in accordance with Sec. 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended. The Secretary of Labor notified me as counsel for complainants on July 27, 1972, of an extension based on a waiver from defendant Local Union 639.

On instructions from my clients, I replied on August 9, 1972, in part, as follows:

> "Meanwhile, we are concerned about the passage of time. As your file shows, on July 23, 1972, more than six months had passed since the election had taken place. Since we believe that members are entitled to a new election and that their rights are diminished by the length of time that it takes them to obtain a new election, we respectfully oppose any further extensions. We also ask you to be mindful of the fact that one of the objections to the election, that the local union only notified about 2500 of the 6000 members, is an objection that still has not been remedied and will consume additional time after a new election is ordered, if a good faith effort to notify all the members is to be made. It may be impossible to construct a complete list of the membership within only a few weeks.
>
> "We believe that the rights of the members of Local 639 justify prompt action by the Secretary of Labor. . . ."

On August 11, 1972, the Director of the Office of Labor-Management Welfare and Pension Reports notified me that the Secretary of Labor had agreed to accept an *additional* waiver until August 30, 1972, notwithstanding our vigorous oral and written objections, but he promised that "no further waivers will be necessary."

Following the election on January 23, 1972, and until the instant suit was filed on August 28, 1972, a period of some six months, during which affiant was advising members of Local Union 639 concerning the exhaustion of internal remedies and the filing of the complaint with the Department of Labor and the negotiations with the Department of Labor concerning same, I expended some 246 hours on these matters.

6. Intervention Necessitated by Secretary's Delays

A suit was finally filed on September 29, 1972, after my repeated insistence that there be no further delay. I was obliged to personally undertake supervision of service of process since the suit had been filed dangerously close to the end of the period, as extended by waiver, within which the statute required the Secretary to file suit. There was danger that failure to diligently serve the defendant Local Union 639 could result in the contention that the suit was untimely. I located the deputy marshal to whom process had been assigned and arranged for intervenor-plaintiff George to accompany the deputy marshal to the door of an officer of defendant Local 639 in order to see that service was effectuated in timely fashion. As a result of the intervenor-plaintiffs' concern over the conduct of the matter by the Department of Labor, particularly in view of the demonstrated apparent lack of concern over the passage of time, I successfully moved for the intervention of George and Feaster.

7. Dilatory Tactics of Defendant and Further Delays by Secretary

I undertook to persuade the Department of Labor to file a motion for summary judgment since, in my view, there were sufficient undisputed material facts, particularly as to the failure to mail notices, so that I concluded that no discovery was necessary. After a number of conferences, the attorneys for the Department of Labor filed

interrogatories and requests for admission and informed me of their intention to take depositions before proceeding further. As the Court is well aware, counsel for defendant Local Union 639 filed a series of dilatory and essentially frivolous motions, which resulted in extraordinary delays. The date on which defendant Local Union 639 was required to file its responsive pleading was delayed until mid-January 1973, nearly six months after the suit had been filed. These motions included a motion for more definite statement, a motion to dismiss, a motion for stay of proceedings, a motion to vacate the order granting the intervention of intervenor-plaintiffs, and some motions called "motions to dismiss motions," among others. I filed an opposition to each of these dilatory motions, and did not ask for a single continuance.

8. Issuance of Withdrawal Card to George

Meanwhile, defendant Local Union 639 began a series of actions designed to render intervenor-plaintiff Daniel George ineligible to run for office in any election that might be ordered by this Court as a result of the success of instant proceedings. I brought these violations of Title I of the LMRDA to the attention of counsel for the Secretary of Labor and drafted and submitted to the Secretary affidavits and numerous other documents, including the history of the decision of the National Labor Relations Board in 201 NLRB No. 34, and the history of George's unsuccessful efforts to seek reemployment in the industry pending that proceeding. On my request, counsel for the Secretary filed on March 14, 1973, a motion for an injunction to prohibit defendant Local Union 639 from treating intervenor-plaintiff Daniel George as a non-member and otherwise discriminating against him and

other members in violation of Title I. After new dilatory motions for extensions of time and two hearings on the matter, in which I participated, the injunction issued on May 4, 1973. Thereafter, defendant Local Union 639 asked for a rehearing and filed a motion to suspend injunction pending appeal and engaged in other dilatory tactics, all of which I actively opposed on behalf of intervenor-plaintiffs.

9. The Summary Judgment of Intervenor-Plaintiffs Precipitated the Secretary's Motion

Approximately one year after the intervenor-plaintiffs had filed their complaint with the Secretary of Labor and one year and a half since the election had taken place, notwithstanding extensive undisputed factual detail that had been obtained through discovery, the Secretary of Labor continued to refuse to file a motion for summary judgment or to move expeditiously for a trial. For these reasons, I filed a motion for summary judgment on June 8, 1973, supported by affidavits, memorandum of points and authorities, and a statement of material facts as to which I alleged that there was no genuine issue. The Secretary filed a motion for summary judgment on the same grounds about one month later on July 13, 1973. The Government attorneys informed me that they would not have filed such a motion at all if intervenor-plaintiffs' motion had not been filed. In any event, on August 17, 1973, this Court granted summary judgment on the grounds asserted in my motion. Defendant Local Union 639 promptly filed its appeal in Appeal No. 73-1938. Defendant Local Union 639 also filed an appeal of the injunction proceeding which has not been heard, but has not been withdrawn.

Between the period from the filing of the suit on August 28, 1972, until the decision of the United States Court of Appeals in Appeal No. 73-1938, the affiant devoted approximately 682 hours to the matter. In order to facilitate court review of my services, a copy of the civil docket in this case is attached hereto.

I spent approximately 52 hours on the appeal, including motions in the Court of Appeals but filed no brief, informing the Court of Appeals that I was satisfied with the excellent brief filed by the Secretary of Labor.

/s/ John V. Long
John V. Long

Subscribed and sworn to before me this 26th day of March 1974.

/s/ Janis (illegible)
[SEAL] Notary Public

My commission expires July 1, 1974

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER J. BRENNAN
Secretary of Labor, United States Department of Labor,
Plaintiff,
and

DANIEL GEORGE and PHILLIP FEASTER,
Intervenors-Plaintiffs,

v.

LOCAL UNION NO. 639, INTERNATONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INC.,
Defendant.

FILED
NOV. 30, 1973
JAMES F. DAVEY, Clerk

Civil Action No. 1963-72

ORDER

This matter having come before the Court on plaintiff's Motion to Compel Defendant to come into Compliance with the Preliminary Injunction, intervenors-plaintiffs' Motion to adjudicate in Contempt and defendant's Motion to Permit Local 639 Executive Board to Act on the Nomination of Daniel George notwithstanding the Order of this Court on May 10, 1973, and the Court having considered the matter and the entire record in this action, and having

heard argument of counsel and being fully advised in the premises, and the Court having found that Daniel George was held to be a member of defendant labor union by the Order of this Court dated May 10, 1973; no change has taken place in the status of Daniel George since that time; the defendant has purported to hold Daniel George ineligible to be a candidate, has acted upon the issuance of a withdrawal card, and has disseminated this information to members of defendant union; and, the Court having concluded that immediate and irreparable injury will result to plaintiff and intervenor-plaintiffs as a result of defendant's actions, it is, this 30th day of November, 1973,

ORDERED that plaintiff's Motion to Compel Defendant to come into Compliance with the Preliminary Injunction be, and hereby is, denied, and it is

FURTHER ORDERED that intervenor-plaintiffs' Motion to Adjudicate in Contempt be, and hereby is, denied without prejudice, and it is

FURTHER ORDERED that defendant's Motion to Permit Local 639 Executive Board to Act on the Nomination of Daniel George notwithstanding the Order of this Court on May 10, 1973, be, and hereby is, denied; and, it is

FURTHER ORDERED that Daniel George is and shall be eligible to run for office in the election of defendant union scheduled for December 16, 1973; and, it is

FURTHER ORDERED that defendant and its officers, agents, servants, and all persons acting in concert with them be, and hereby are, enjoined from making the determination that Daniel George is ineligible to be a candidate in such election; and, it is

FURTHER ORDERED that defendant and its officers, agents, servants, and all persons acting in concert with them be, and hereby are, enjoined from making any written or oral statements to members, the press, or other persons alleging that Daniel George is not or has not been in the past a member in good standing and eligible to run for office in the election scheduled for December 16, 1973; and, it is

FURTHER ORDERED that defendant be required to post prominently on bulletin boards at all barns and terminals where its members are employed, and at the union hall a notice to the effect that Daniel George is a member in good standing of Local Union 639, that he has been in good standing for at least two years immediately prior to October 1, 1973, and that he is fully eligible to run for local union office; and, that the Executive Board resolution of October 29, 1973, to issue him a withdrawal card is null and void since the issuance of such a withdrawal card would violate the requirements of the LMRDA, the union Constitution and By-Laws and the Order of this Court dated May 10, 1973.

/s/ George L. Hart, Jr.
GEORGE L. HART, JR.
United States District Judge

Approved as to form.

/s/ (Illegible)
Attorney for Plaintiff

/s/ John V. Long
Attorney for Intervenor-Plaintiffs

Attorney for Defendant

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